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John C. Moylan III

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DONALD STUART RUSSELL —IN MEMORIAM

JOHN C. MOYLAN III*

Just over twenty-five years ago, Judge Donald S. Russell began his tribute to Governor, Secretary of State, and Justice James F. Byrnes by noting that “[f]ormidable, indeed, is the task of him who essays to review adequately the life and career of one who demonstrated such versatility and variety of talents and who filled with such distinction and ability so many high positions of public responsibility and trust.”¹ Such it is to memorialize Donald Russell.

Judge Russell served South Carolina and his country with brilliance, distinction, and integrity for more than a half century. From University President to Governor to United States Senator to Federal Judge, Donald Russell will be remembered not only for the quality of his accomplishments but also because he fulfilled each role as a true gentleman, even when that comportment seemed to have long passed from style.

Donald Russell was born the son of a farmer in Lafayette Springs, Mississippi, on February 22, 1906, with remarkably few advantages in life. Donald’s father died when he was only four years old. Thereafter, his mother moved the family to Chester, South Carolina, where she opened a boardinghouse. It was in Chester that Donald Russell held his first job, a newspaper delivery boy.

When he was just fifteen years old, Donald entered the University of South Carolina and supported himself by working at a filling station. He graduated first in his class in 1925 and then entered the law school, where he again graduated first in his class. While a student at Carolina, he met Virginia Faire Utsey of St. George, South Carolina. They married in 1929 and remained singularly devoted to one another until Judge Russell died on his birthday sixty-

* Member, Wyche, Burgess, Freeman & Parham, P.A. in Columbia, S.C. Law Clerk to the Honorable Donald Stuart Russell, 1987-88. J.D. 1987, Harvard University; B.A. *cum laude* 1984, Presbyterian College.

1. Donald S. Russell, *Remarks on the Life of James F. Byrnes*, 25 S.C. L. REV. 535 (1972).

nine years later.

After an additional year of graduate work in law at the University of Michigan, Donald Russell returned to South Carolina and began his law practice in Union. In 1930, he moved to Spartanburg and joined the law firm of Nichols, Wyche, and Byrnes where he first began working with the man who would become his mentor, James F. Byrnes.

Following the Japanese attack on Pearl Harbor, Donald Russell joined the War Department in Washington and then served successively as Assistant Director of Economic Stabilization, Assistant to the Director of War Mobilization, and as a Major in the Army at the Supreme Headquarters Allied Expeditionary Forces, Europe. Following the war, he served as Deputy Director of War Mobilization Reconversion and then became Assistant Secretary of State under Secretary Byrnes. In 1947, he returned to Spartanburg.

Even after returning to South Carolina, Donald Russell's national reputation grew. When he was selected as President of the University of South Carolina in 1952, *Time* magazine noted that "Donald Russell might prove to be just the man" it needs.² As President of the University, Donald Russell focused much of his energy recruiting better faculty members. He lobbied the South Carolina General Assembly for increased faculty salaries and, at the same time, returned his own salary to the University. Likewise, he personally paid to renovate the President's House and to bring in national figures like the then-Senator John F. Kennedy. Understandably, Rutledge Osborne, the chairman of the Board of Trustees during the Russell presidency, commented when President Russell retired from the University that "it is doubtful that the University has ever sustained a greater loss in the one hundred and twenty-five years of its existence. . . . No man ever accomplished so much in so short a time at the University as Donald Russell."³

Donald Russell left the University committed to continuing his life as a public servant. In 1958, he ran for Governor but was defeated by Ernest F. Hollings. Russell ran again four years later and was elected. The gentlemanliness that marked his personality marked his administration. Governor Russell shocked many of his supporters when he held South Carolina's first integrated inauguration by opening the grounds of the Governor's Mansion to all South Carolinians. He was fond of recounting the tales of people showing up for the inauguration pushing shopping carts into which they loaded as much barbeque as they could manage to take home. Not discouraged, Governor and Mrs. Russell continued the open-house policy at the Governor's Mansion after the inauguration as they declared the home open to all South Carolinians at all times.

Governor Russell then led South Carolina through perhaps the most orderly

2. *Education: Appointment in Carolina*, *TIME*, Jan. 7, 1952, at 59.

3. Document from University Archives (on file with author).

civil rights transition of any southern state in the 1960s. Unlike his counterparts across the South, Governor Russell determined that violence would have no place in South Carolina. When Harvey Gantt enrolled at Clemson, Governor Russell demanded that all South Carolinians respond peaceably, without violence and disorder, and with respect for the state and her people.

In 1965, Governor Russell resigned as governor and was appointed to fill the United States Senate seat vacated by the death of Olin D. Johnston. He served as United States Senator until 1966 when he lost the election to Ernest Hollings.

Even with all of his other experiences and accomplishments, it was perhaps in his final role as jurist that Donald Russell left his most lasting legacy. President Lyndon Johnson, a Democrat, appointed Donald Russell in 1967 to the United States District Court. Four years later, a Republican, Richard Nixon, elevated him to the United States Court of Appeals for the Fourth Circuit. Judge Russell served on that Court with distinction for more than twenty-five years, writing nearly 475 published opinions.

Those opinions were marked by a common-sense approach that sought not only to follow the law but also to do justice. His opinions in two very different cases demonstrate this desire. In 1988, the Fourth Circuit faced the first ever criminal conviction of a Federal employee for leaking government documents to the press. The case presented the Court with the unique challenge of balancing the First Amendment's freedom of speech against the interests of national security. Judge Russell, writing for the Court, upheld—over the objections of the appellant and amicus *Washington Post*—the espionage conviction of a Navy intelligence analyst who had disclosed sensitive material to *Jane's Defense Weekly*:

The mere fact that one has stolen a document in order that he may deliver it to the press, whether for money or for other personal gain, will not immunize him from responsibility for his criminal act. To use the first amendment for such a purpose would be to convert the first amendment into a warrant for thievery.⁴

The Supreme Court denied certiorari in this case, allowing Judge Russell's well-reasoned opinion stand.

That same year, the Fourth Circuit faced a highly publicized case in which Dr. Elizabeth Morgan and her minor daughter brought an action against the child's father for damages arising out of the alleged sexual abuse of Hilary. At trial, the district court had excluded all statements made by the daughter and evidence that another sibling had also been sexually abused. Judge Russell,

4. *United States v. Morison*, 844 F.2d 1057, 1077 (4th Cir. 1988), *cert. den'd*, 488 U.S. 908 (1988).

writing for the court, noted the inherent difficulties in trying cases involving alleged child abuse: "methods of proof in child abuse cases are severely lacking. Often, the child is the only witness. Yet age may make the child incompetent to testify in court, and fear, especially when the perpetrator is a family member, may make the child unwilling or unable to testify."⁵ With these concerns in mind, the Fourth Circuit reversed the district court and held that the excluded evidence should have been allowed: "In rendering this judgment, we are mindful of the common-sense admonition that '[w]hen the choice is between evidence which is less than best and no evidence at all, only clear folly would dictate an across-the-board policy of doing without.'"⁶ The Supreme Court has now cited this opinion with favor⁷ as have courts from Florida⁸ to Alaska.⁹

These opinions are merely two examples of Judge Russell's ability to provide justice through a common-sense but well-reasoned approach to the law. Indeed, the Fourth Circuit, its attorneys, and its litigants all benefitted greatly from Judge Russell's keen legal mind that allowed him to see clearly and quickly what was obscured to many. Judge Russell was blessed with the uncanny ability to cut through the superfluous and get straight to the heart of an issue. The more astute attorneys who appeared before Judge Russell in Richmond understood that their arguments were over—for better or for worse—when Judge Russell would ask in the most polite tone imaginable, "Anything further?" That was his signal that he had read the briefs, fully grasped the issues, and was no longer gaining additional enlightenment by the arguments being advanced by counsel.

It was fitting that Judge Russell should serve for over a quarter of a century on a Court that is known around the country for its gentility. Like the results he sought in his opinions, he believed that shaking hands with the attorneys at the end of every oral argument was not only following precedent, but was also the right thing to do.

Finally, in his role as a man, Judge Russell shone most brightly. To his family, he was a loving husband and father. Nothing brought a smile to his face quicker than a visit from one of his grandchildren, whose laughter often echoed in the Judge's chambers. To his friends, Judge Russell was a loyal and trusted companion. No matter how busy he may have been, the Judge always had time for a visit when a friend dropped by his office or his home. To his clerks, Judge Russell was a hero, who had filled with distinction virtually every role to which a young attorney might aspire. A clerkship with Judge Russell was, quite simply, the best year one could ever hope to spend. And to all, Judge Russell

5. *Morgan v. Foretich*, 846 F.2d 941, 943 (4th Cir. 1988).

6. *Id.* (citation omitted).

7. *Idaho v. Wright*, 497 U.S. 805, 821 (1990).

8. *Florida v. Ochoa*, 576 So. 2d 854, 856 (Fla. 1991).

9. *Dezarn v. Alaska*, 832 P.2d 589, 591 (Alaska 1992).

was a gentleman—he never smoked, he never drank, he never went outside without a hat, he never passed anyone on the street without speaking, and he never failed to be concerned for his fellow man.

For those who knew Judge Russell, the words of Jimmy Byrnes reflect our own sentiments: “I have known many men in my long public career, but I have never known a better man than Donald Russell.”¹⁰ Judge Russell enriched the lives of all of us who were fortunate enough to know him, and we will miss him greatly.

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10. *Byrnes Dedicates 'Russell House', Predicts Glorious Future for USC*, THE STATE (Columbia, S.C.), Oct. 17, 1955, at A1 (quoting The Honorable James F. Byrnes).

